

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.*

RAMASAMI (PLAINTIFF), APPELLANT,

v.

MUTTUSAMI AND ANOTHER (DEFENDANTS), RESPONDENTS.*

Limitation Act—Act XV of 1877, s. 19, sched. II, arts. 57, 115—Date when money becomes due—Acknowledgment in holograph will unsigned.

In a suit against the legal representative of a deceased debtor to recover the amount of the debt, it appeared that the debt was contracted more than three years, but was payable less than three years before suit. In bar of limitation the plaintiff relied upon an admission of the debt in a draft will, written by the testator, in the first line of which his name appeared:

Held, per Weir, J., that the admission in the will did not constitute an acknowledgment under Limitation Act, s. 19;

per Muttusami Ayyar and Parker, JJ., that the period of limitation should be computed from the date when the debt was due and the suit was not barred.

PETITION under Provincial Small Cause Courts Act, 1887, section 25, praying the High Court to revise the proceedings of C. W. W. Martin, District Judge of Salem, in small cause suit No. 19 of 1888.

The facts of the case are stated above sufficiently for the purposes of this report.

The District Judge passed a decree for plaintiff quoting the following cases: *Andarji Kalyanji v. Dulabh Jeevan*(1), *Daia Chand v. Sarfrax*(2) and *Mohesh Lal v. Busunt Kumaree*(3).

The defendants preferred this petition.

Ramasami Mudaliar for petitioners.

Parthasaradhi Ayyangar for respondent.

WEIR, J.—The decision cannot, I think, be supported. The will, although in the testator's handwriting, is not signed; and section 19 of the Limitation Act requires the acknowledgment to be made in writing, signed by the party against whom the right is claimed. The decisions of the Allahabad and Calcutta Courts relied on by the District Judge are clearly distinguishable in their circumstances from the present case, and the counter-petitioner's

* Letters Patent, Appeal No. 26 of 1890.

(2) I.L.R., 1 All., 117.

(1) I.L.R., 5 Bom., 88.

(3) I.L.R., 6 Cal., 340.

pleader admits that they do not apply. He relies, however, on the case of *Andarji Kalyanji v. Dulabh Jeevan*(1) referred to by the District Judge. That case proceeded on the special ground that among the community, whose writing was in question, it was the practice not to sign the account, but to head it in a peculiar way, showing that it was written in the writer's own hand. No such practice is alleged, nor can be alleged in regard to the class of documents in question in the present proceeding, viz., a will.

I must hold, therefore, that the District Judge erred in law in holding that there was an acknowledgment of the debt; and reversing the District Judge's decree, I direct that the suit be dismissed, but I shall not allow costs.

The plaintiff preferred an appeal under Letters Patent, section 15, against this judgment.

The appeal came on for disposal before MUTTUSAMI AYYAR and PARKER, JJ.

Mr. *R. F. Grant* and *Panchapagesu Sastri* for appellants.

Ramasami Mudaliar for respondents.

JUDGMENT.—The District Judge found the plaintiff's case was established, the averment in the plaint being that the loan was made on 30th September 1885 and was repayable in one month from that date. The plaint was presented on 24th October 1888. There was also evidence to support the finding of the Judge.

Even, therefore, if the admission contained in the will does not amount to an acknowledgment, the suit is not barred. We agree with the decision of the Calcutta High Court in *Rameshwar Mandal v. Ram Chand Roy*(2) that such a suit will fall under article 115 of the Limitation Act and not under article 57.

The decree of the learned Judge must, therefore, be reversed and that of the District Judge restored, but as this point was not taken before we shall make no order as to costs in this Court. The plaintiff is entitled to other costs.

(1) I.L.R., 5 Bom., 88.

(2) I.L.R., 10 Cal., 1033.